

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DAKOTA BLU BURNS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-22-707-SLP
	)	
STATE OF OKLAHOMA,	)	
	)	
Respondent.	)	


**ORDER**

Before the Court is the Report and Recommendation of United States Magistrate Judge Shon T. Erwin [Doc. No. 13]. Judge Erwin recommends that the Court dismiss the Petition as untimely. In the Report and Recommendation, Judge Erwin advised Petitioner of his right to file an objection by November 10, 2022, and further advised him that failure to make timely objection waives the right to appellate review of both factual and legal issues contained therein. On November 16, 2022, Petitioner was granted an extension of time until November 30, 2022 to file an objection to the Report and Recommendation. *See* Order [Doc. No. 15]. To date, Petitioner has not filed an objection to the Report and Recommendation, nor has he requested an additional extension of time in which to do so. Accordingly, the Court adopts the Report and Recommendation in its entirety.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 13] is ADOPTED and this matter is DISMISSED as untimely. A separate judgment of dismissal shall be entered contemporaneously with this Order.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability (COA) when it enters a final order adverse to a petitioner. A COA may issue only upon “a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(2). When the district court dismisses a habeas petition on procedural grounds, the petitioner must make this showing by demonstrating both “[1] that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and [2] that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court finds that reasonable jurists would not debate the correctness of the Court’s determination that the Petition is untimely filed. The Court therefore denies a COA.

IT IS SO ORDERED this 9<sup>th</sup> day of January, 2023.

  
SCOTT L. PALK  
UNITED STATES DISTRICT JUDGE